October 30, 1998

D.T.E. 98-78/83

Petition of Cambridge Electric Light Company, Commonwealth Electric Company, and Canal Electric Company for Approval of Asset Divestiture.

Petition of Eastern Edison Company and Montaup Electric Company for Approval of a Sale by Montaup of its interest in the Canal 2 generating facility to Southern New England, L.L.C.

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I. INTRODUCTION

On July 31, 1998, Cambridge Electric Light Company ("Cambridge"), Commonwealth Electric Company ("Commonwealth"), and Canal Electric Company ("Canal") (together, "COM/Elec" or the "Companies") filed a petition with the Department of Telecommunications and Energy ("Department") for approval of the sale of substantially all of their non-nuclear generating assets to Southern New England, L.L.C ("Asset Divestiture"). The matter was docketed as D.T.E. 98-78. On August 7, 1998, Eastern Edison Company ("EECo") and Montaup Electric Company ("Montaup") (together, Eastern Utility Associates ("EUA")) filed a petition for approval of a sale by Montaup of its interest in the Canal 2 generating facility to Southern New England.[1] The matter was docketed as D.T.E. 98-83. Pursuant to notice duly published, a public hearing was held at the Department's offices on August 27, 1998, at which time the two proceedings were consolidated.

The following entities sought and received[2] intervenor status: the Division of Energy Resources ("DOER"); Southern Energy New England, Southern Energy Canal and Southern Energy Kendall, L.L.C. ("Southern"); Cape Light Compact and Constituent Municipalities

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1 Canal and Montaup are both 50 percent owners in the Canal 2 generating facility.

2 Harvard College's petition to intervene late was denied by the hearing officer (Hearing Officer Ruling on Motion for Leave to File Reply Memorandum and Petition to Intervene of MIT and Motion to File Late Petition and Petition to Intervene of Harvard College dated September 10, 1998). Harvard's appeal of the hearing officer ruling also was denied. D.T.E. 98-78/83, Interlocutory Order Denying Harvard College's Appeal of Hearing Officer Ruling, (October 26, 1998).

("Compact"); and the Massachusetts Institute of Technology ("MIT").[3] The Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention as of right, pursuant to G.L. c. 12, § 11E. Boston Edison Company ("BECo") and Western Massachusetts Company ("WMECo") were granted limited participant status.

Evidentiary hearings were held on September 16, 17 and 18, 1998. In support of its petition, COM/Elec presented the testimony of Russell D. Wright, chief executive officer of COM/Elec; Michael R. Kirkwood, director of supply administration, transmission services and system control; Frank J. Kinney, III, vice-president, investment banking division of Goldman, Sachs & Co.; Robert H. Martin, manager of regulatory accounting; and Henry LaMontagne, manager of pricing and rate design. EECo presented the testimony of the following witnesses in support of its petition: Michael J. Hirch, vice-president for EUA Service Corporation ("EUASC") and all EUA companies; Donald T. Sena, assistant treasurer of EUASC and all EUA companies; Dennis St. Pierre, vice-president for EUASC; and John J. Reed, president of Reed Consulting Group. Briefs were filed on September 25, 1998 by COM/Elec, EECo, the Attorney General, Compact, MIT and Southern; reply briefs were filed on October 2, 1998 by the same parties.[4] The record consists of 168 exhibits and 29 record requests. In addition, the

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3 See Hearing Officer Ruling on Motion for Leave to File Reply Memorandum and Petition to Intervene of MIT and Motion to File Late Petition and Petition to Intervene of Harvard College dated September 10, 1998 for background of MIT's Petition to Intervene.

4 Compact inadvertently failed to serve MIT's counsel with a copy of its brief. Consequently, MIT sought leave to file a supplemental reply brief directed only at Compact's arguments, which it did on October 9, 1998. COM/Elec objected. MIT's request is granted and its supplemental brief will be considered.

Department has incorporated by reference COM/Elec's Restructuring Plan approved in Cambridge Electric Light Company/Commonwealth Electric Company/Canal Electric Company, D.P.U./D.T.E. 97-111 (1998) (Exh. CEC-1).

II. STANDARD OF REVIEW

The Legislature has vested broad authority in the Department to regulate the ownership and operation of electric utilities in the Commonwealth. See, e.g., G.L. c. 164, § 76; D.P.U./D.T.E. 97-111, at 17. The Department's authority was most recently augmented by the Restructuring Act.[5] Boston Edison Company, D.P.U./D.T.E. 96-23, at 9 (1998). The Restructuring Act requires that each electric company organized under the provisions of Chapter 164 file a plan for restructuring its operations to allow for the introduction of retail competition in generation supply in accordance with the provisions of Chapter 164. G.L. c. 164, § 1A(a). Among other things, the Restructuring Act requires that all restructuring plans contain a detailed accounting of the company's transition costs and a description of the strategy to mitigate those transition costs. Id. One possible mitigation strategy is the divestiture of a company's generating units. G.L. c. 164, § 1.

In reviewing a company's proposal to divest its generating units, the Department considers the consistency of the proposed transactions with the company's restructuring plan, or in some cases the company's restructuring settlement, and the Restructuring Act. A

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5 An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provisions of Electricity and Other Services, and Promoting Enhanced Consumer Protections Therein, signed by the Governor on November 25, 1997 (the "Restructuring Act"). St. 1997, c. 164.

divestiture transaction will be determined to be consistent with the company's restructuring plan or settlement and the Restructuring Act if the company demonstrates to the Department that the "sale process is equitable and maximizes the value of the existing generation facilities being sold." G.L. c. 164, § 1A(b)(1). A sale process will be deemed both equitable and structured to maximize the value of the existing generating facilities being sold, if the company establishes that it used a "competitive auction or sale" that ensured "complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate in such auction or sale." G.L. c. 164, § 1A(b)(2).

The Restructuring Act provides that all proceeds from any such divestiture of generating facilities "that inure to the benefit of ratepayers, shall be applied to reduce the amount of the selling company's transition costs." G.L. c. 164, § 1A(b)(3). Where the Department has approved a company's restructuring plan or settlement as consistent or substantially compliant with the Restructuring Act, the Department will approve a company's proposed ratemaking treatment of any divestiture proceeds if the company's proposal is consistent with the company's approved restructuring plan or settlement.

III. DESCRIPTION OF THE ASSET DIVESTITURE

A. Overview

The proposed Asset Divestiture consists of the sale to Southern of 1,264 megawatts ("MW") of fossil[6] generation capacity owned by four companies: Canal, Montaup,

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[6] Fossil fuels burned for generation may include oil, gas, and coal.

Commonwealth, and Cambridge (Exhs. MRK-1, at 6-7, 18; MJH-1, at 5).[7] The generation capacity is located on five sites in eastern Massachusetts and Maine. The bulk of the generating capacity is located at Canal Station in Sandwich, Massachusetts and consists of two units -- Canal 1, a 566 MW dual-fuel (oil/gas) steam turbine owned by Canal, and Canal 2, a 565 MW oil-fired steam turbine, half of which is owned by Canal and half of which is owned by Montaup (Exhs. MRK-1, at 6; MJH-1, at 5; RHM-4, at 5A).[8] Canal and Montaup negotiated an agreement specifying the division of the proceeds between them from the sale of their joint ownership in Canal 2 (Exhs. MRK-3; MJH-2; Tr. at 253-255).[9] Cambridge proposes to sell its Kendall Station in Cambridge, Massachusetts, consisting of 64 MW from a dual-fuel (oil/gas) generating unit and 46 MW from oil-fired jets (Exhs. MRK-1, at 7; RHM-4, at 5). Commonwealth proposes to sell five diesel generators, with a total capacity of 14 MW, at Oak Bluffs and West Tisbury on the island of Martha’s Vineyard, Massachusetts ("Martha's Vineyard Diesels") (Exhs. MRK-1, at 6-7; Book 3, at 11). Commonwealth also proposes to sell its 9 MW interest in the Wyman 4 oil-fired steam turbine generator in Yarmouth, Maine (Exh. MRK-1, at 6).

In addition to the plants themselves, the Companies will also be selling the land, inventories of fuel and equipment, plant records, permits and agreements, emissions credits

[7] These companies own other generating facilities (principally Somerset, Blackstone, and interests in nuclear facilities) whose sale is not before the Department in this case.

[8] Canal is the sole owner of the land and associated improvements that are not part of the generating station (Tr. at 254-255).

[9] Citations to the transcript refer to the transcript of the three days of evidentiary hearings.

and allowances, and warranty and indemnity rights (Exh. MRK-1, at 22).[10] However, COM/Elec is retaining the COM/Energy Steam Company property at Kendall Station and all transmission, distribution, and substation facilities at the Massachusetts sites (Exh. MRK-1, at 22).

As part of the Asset Divestiture, Southern will provide a portion of the supplies (Southern's "backstop obligation") for standard offer generation service[11] to Montaup, Commonwealth, and Cambridge, based on the share in the companies' supply portfolios represented by the generating assets Southern is buying (Exhs. MRK-1, at 25; MJH-1, at 12-13). The standard offer supply agreements (Wholesale Transition Service Agreements) provide that the companies cannot re-bid Southern's portion of the standard offer generation service supply without COM/Elec's prior approval, or after 1998 in Montaup's case (Exhs. DTE-1-6; Book 4, at 32; MJH-1, at 13; MJH-5, at 19). The Companies stated that Southern specifically requested such a provision, and claimed that the standard offer generation service backstop obligation provides positive value to Southern (Exh. DTE-1-6; Tr. at 257-258).

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[10] The property sold by the Companies to Southern is more particularly described in the Asset Sale Agreements and related agreements filed with the Department (Exhs. Books 1-4; MJH-4 through MJH-7).

[11] Standard offer generation service is available from 1998 through 2004 to customers who do not choose an electricity supplier. The price for standard offer generation service rises each year, according to a schedule provided in the restructuring Plan, but the total price of electricity paid by standard offer generation service customers meets the ten and 15 percent rate reduction requirements of the Restructuring Act.

In exchange for these generating assets, Southern proposes to pay Canal $401,091,000 for its share of Canal Station, Montaup $75,102,000 for its share of Canal 2, Cambridge $60,199,000 for Kendall Station, and Commonwealth $608,000 for its share of Wyman 4 and the Martha's Vineyard diesels (Exhs. Book 2, at 19; MJH-1, at 5; Book 1, at 19; Book 3, at 7-8, 11).

The Asset Divestiture consists of 22 related agreements covering the sale of these six assets to Southern, as set forth below.

(1) Southern has signed four bilateral Asset Sale Agreements governing the terms of the transaction as a whole with Canal, Commonwealth, Cambridge, and Montaup, respectively.

(2) Montaup and Canal have entered into a Memorandum of Understanding specifying how the proceeds from the sale of the Canal Plant will be divided between them.

(3) Southern signed two Wholesale Transition Service Agreements, one with Montaup and one with Commonwealth and Cambridge.

(4) Southern has three Interconnection and Site Agreements governing its relationships with Canal, Commonwealth, and Cambridge, respectively.

(5) Southern Energy, Inc. provides four monetary Guaranties: to Canal, Montaup, Commonwealth, and Cambridge.

(6) There are two Bills of Sale by which Montaup and Canal sell their respective portions of the Canal Plant switchyard facilities to Commonwealth.

(7) There is a Distribution Service Agreement between Southern and Commonwealth.

(8) There is a Transmission Service Agreement between Southern and Cambridge.

(9) There are three Assignment Agreements between Southern Energy New England and the three Southern affiliates that will own and operate Kendall Station, the Canal Plant, and the Martha's Vineyard diesels, respectively.

(10) An Amendment ends the sales under the Canal 2 contract from Canal to Commonwealth and Cambridge (Exhs. Books 1-4; MJH-4 through MJH-7).

B. Review of the Asset Divestiture

1. Introduction

In ruling on the Asset Divestiture, the Department first reviews the auction process, and then reviews whether the proposed Asset Divestiture maximizes the value to ratepayers of the assets being sold.

2. Review of the Auction Process

The Companies designed an auction process consisting of two rounds of bidding, in order to determine how to maximize the value of the generating assets being sold (Exh. MRK-1, at 14). For the first round, the Companies identified and sought bids from 142 prospective bidders (id. at 11). Twenty prospective bidders were given simplifying assumptions and flexibility to construct bids for individual generating stations or the generating business as a whole (id. at 12). Each prospective bidder received a detailed description of the assets on CD-ROMs, access to tours of the facilities, and access to the Companies' management and technical personnel (id. at 12-13; Tr. at 244-245). Written responses to questions from any prospective bidder were circulated to all prospective bidders (Exh. FJK-1, at 6; Tr. at 246-250). The bidders' identities were kept confidential from one another (Exh. FJK-1, at 5).

The Companies received 14 first-round, non-binding bids: nine for generating assets and five for Purchase Power Agreements ("PPAs")[12] (Exh. MRK-1, at 13). Several PPA holders proposed restructurings of their respective PPAs (id. at 13-14). The Companies reviewed information received in the first-round bids to determine which would likely provide the maximum value in the final round, thereby maximizing the mitigation of transition costs (id. at 14). The Companies then invited thirteen bidders to participate in the second and final round of bidding (id. at 14-15). For the second round of bidding, the Companies added Montaup's 50 percent ownership interest in Canal 2 to the set of generating assets being sold (id. at 18). The Companies also made several updates and minor changes to information supplied to first-round bidders (id. at 18-20). After further due diligence activities, four parties submitted final and binding bids for the generating assets (Exh. FJK-1, at 6).

As stated above, the Restructuring Act provides that a sale process will be deemed equitable if the company establishes that it used a "competitive auction or sale" that ensured "complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate in such auction or sale." G.L. c. 164, § 1A(b)(2).

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12 Commonwealth and Cambridge are conducting a separate auction of their PPA entitlements, in which they have already received bids from third parties and from PPA holders (Exh. MRK-1, at 13-14, 33). The 22 PPA entitlements require the Companies to buy 657 MW, resulting in more than 4 billion kilowatt-hours ("KWH") per year through 2002 and more than 3 billion KWH through 2012, at a cost of $200 to $300 million per year (Exhs. RHM-3, Sch. 1, at 11-12; RHM-4, Sch. 1, at 11-12; 1997 Federal Energy Regulatory Commission Form 1 for Cambridge and Commonwealth at 326-327). The Companies have been conducting negotiations with several bidders and expect to complete that process soon (Exh. DTE-1-11). The Companies have not yet filed results from that process with the Department.

The record shows that bidders had full access to relevant data on an equal basis, had access to the Companies' relevant personnel, and had the opportunity to submit questions regarding the facilities being sold (Exhs. MRK-1, at 12-15; FJK-1, at 5; Tr. at 244-245). The Companies provided written responses to any questions to all bidders (Exh. FJK-1, at 6; Tr. at 246-250). At the same time, the Companies preserved the confidentiality of the process.

No party contested the Companies' assertion that the auction process was equitable. Based on the above evidence, the Department finds that the auction process used by the Companies to divest their generating assets ensured complete, uninhibited, non-discriminatory access to all data and information by all parties seeking to participate in the auction, and therefore was equitable.

3. Maximizing the Value of the Assets Sold

The Companies evaluated the bids based on the purchase price offered, considering any exceptions to the Companies' proposed sales documents (Exh. MRK-1, at 17, 21). The Companies chose the highest bid, which was from Southern, for all of the generating assets (Exhs. DTE-1-2; MRK-1, at 21).

The Restructuring Act states that the results of a competitive auction that ensures complete, uninhibited, non-discriminatory access to all data by all interested parties seeking to participate in the auction are deemed to satisfy the Act's requirement that a company demonstrate to the Department that the sale process maximizes the value of the generation facilities being sold. An open, rational, transparent, and fairly managed auction tests the market for, and value of, an asset at the time of the offering. The bid results of such a market test under proven fair conditions are strong evidence of an asset's worth. Based on the evidence above concerning the auction process and the bid selection, the Department finds that the Companies selected the highest bidder from an equitable auction process that satisfies the Act's requirements.

The Department notes that the overall sale price accruing to COM/Elec of $461,900,000 represents almost six times the net book value of the generating assets being sold, or about $470 per kilowatt ("KW") (Exh. JJR-2). This price is higher than the corresponding figures for Massachusetts Electric Company ("MECo") and for BECo (about one and a half times book value and between $300 and $350 per KW) in their asset divestitures (id.). The sale price accruing to Montaup for its share of Canal 2 is $75,100,000, almost twice its net book value, or about $270 per KW (id.).

The Department recognizes that it is difficult to compare the results of sales of generation assets because of differences in the type and vintage of the assets and differences in the terms of the transactions. Nonetheless, such comparisons are helpful as one factor in determining whether the value of the assets has been maximized. The Department finds that the proceeds of this sale, on the basis of the ratio of sale price to book value and on the basis of dollars per KW, compare favorably with the proceeds from other transactions. Thus, not only did the Companies choose the highest bid from a competitive auction, but that bid compared well with bids from other auctions. In addition, the Department notes that no party contested the Companies' assertion that the auction process maximized the value of the assets sold. Accordingly, the Department finds that the divestiture process used by the Companies maximized the value of the generating assets for ratepayers and thus satisfies the Restructuring Act.

4. Designation of Generating Assets as Eligible Facilities

COM/Elec and EUA request that the Department designate certain generating assets as facilities eligible to be exempt wholesale generators (“EWGs”) pursuant to the Public Utility Holding Company Act of 1935 ("PUHCA"), 15 U.S.C.A. § 79z-5a(2) (EUA Petition at 2; Exh. MRK-1, at 29).[13]

EUA requests this designation specifically for Montaup's share of Canal 2 (EUA Petition at 2; EUA Brief at 10). EUA explains that it makes its request in order to eliminate its need, as a PUHCA registered holding company, to obtain approval from the Securities and Exchange Commission (“SEC”) under 15 U.S.C.A. § 79B(a) to sell Montaup's interest in Canal 2 (id. at 9). EUA states that, in order for a registered holding company to bypass SEC approval, every state commission having retail jurisdiction over its affiliates is required to make certain determinations (id. at 9). According to EUA, specific state determinations are required, namely that allowing the facility to be an eligible facility (1) will benefit customers, (2) is in the public interest, and (3) does not violate state law (id. at 10, citing 15 U.S.C.A. § 79z-5a(c)(B)).

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13 15 U.S.C.A. § 79z-5a(a)(1) defines an EWG to be "exclusively in the business of owning, operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale." Further, an eligible facility is a facility used for the "generation of electric energy exclusively for sale at wholesale." 15 U.S.C.A. § 79z-5a(2)(A). 15 U.S.C.A. § 79z-5a(c) requires specific state determinations before a facility that was already under construction or operating on the date of enactment of these provisions may become an eligible facility.

EUA claims that obtaining Department approval reduces administrative costs and erosion of the residual value credit ("RVC") by eliminating the need for SEC authorization, in turn maximizing mitigation benefits for EUA's customers (EUA Brief at 11). EUA also maintains that the proposed divestiture is within the letter and spirit of the Restructuring Act (id.). Accordingly, EUA requests the Department to find that it has "sufficient regulatory authority, resources, and access to books and records to exercise its duties, and that the designation of Canal 2 as an eligible facility as defined in PUHCA will (1) benefit customers, (2) is in the public interest and (3) does not violate state law" (id.).

COM/Elec, an exempt holding company under PUHCA, requests eligible facility status designation for Kendall Station, the Martha's Vineyard diesels, and Commonwealth's share of Wyman 4 for a different reason (Exh. MRK-1, at 29; COM/Elec Brief at 55). Southern explains that COM/Elec is requesting this Department finding because Kendall, Wyman 4 and the Martha's Vineyard have been included in retail rates, and therefore, approval by the state commission with authority over the rate base in question is required for them to be granted eligible facility status as wholesale generating units (Southern Brief at 3). COM/Elec points out that the state determinations will allow Southern to seek approval of EWG status from the Federal Energy Regulatory Commission ("FERC") (COM/Elec Brief at 30). EUA and COM/Elec both note that the Department approved a similar request for MECo (EUA Brief at 10-11; COM/Elec Brief at 30, citing Massachusetts Electric Company, D.P.U./D.T.E. 97-94, at 48 (1997)).

The Department, as a state commission with retail rate authority over EUA and COM/Elec companies, has reviewed the companies’ books and records relating to Kendall, Wyman 4, the Martha's Vineyard diesels, and Canal 2. The Department notes that Southern proposes to purchase these units in order to operate them as EWGs, with a purchase price reflecting that expectation. Moreover, we recognize that timely Department approval of the companies’ petitions for eligible facility status would avoid the administrative cost of an SEC filing and concomitant delay. Such avoidance would maximize the value of the assets sold as required by the Restructuring Act, thereby benefitting the Companies' customers. The Department finds that, for both EUA and COM/Elec, we have sufficient regulatory authority, resources, and access to books and records.

Based on the fact that the expectation of eligible status underlies the purchase price which mitigates transition costs to be paid by ratepayers and because timely action will avoid administrative costs that would similarly be borne by ratepayers, the Department finds that designation of the requested facilities as eligible facilities will benefit customers. Because it will benefit customers and the record does not contain any evidence suggesting that it will harm the public interest in any way, the Department finds that it is in the public interest. Since the divestiture is undertaken in order to comply with the Restructuring Act, because the Department has approved the divestiture process as satisfying the requirements of the Act, and because competing wholesale generators will be an integral part of the competitive generation industry that the Act was designed to enable, the Department finds that the designation of the requested facilities as eligible facilities does not violate state law, but rather, furthers the objectives of the state law. Accordingly, for the above reasons, the Department approves the designation as eligible facilities, as defined in PUHCA, for Canal 2, Kendall, the Martha's Vineyard diesels, and Commonwealth's share of Wyman 4, because such a designation (1) will benefit customers, (2) is in the public interest and (3) does not violate state law.

IV. ALLOCATION OF COM/ELEC'S PROCEEDS FROM THE CANAL SALE

A. Introduction

Canal owns 100 percent of Canal 1 and 50 percent of Canal 2 (Exh. MRK-1, at 27). Canal 1 and Canal 2 are essentially the same size in MW, but differ in many other ways. Canal 1 is a 566 MW oil-fired unit that was placed in service in July 1968 while Canal 2 is a 565 MW dual fuel (oil/gas) unit that was placed in service in February 1976 (id.). Canal 1 is designed for base load operation, whereas Canal 2 is designed for cycling service (Exh. JJR-1, at 5). Canal sells its 50 percent of the output from Canal 2 to Commonwealth and Cambridge (Tr. at 112). Canal sells 25 percent of the output from Canal 1 to Commonwealth and Cambridge, but sells the other 75 percent in equal shares to BECo, New England Power Company ("NEP"), and Montaup (id. at 108; Exh. JJR-1, at 5).

B. The Companies' Proposal

The Companies propose to allocate Canal's book value, which is the fixed level of transition costs charged to Commonwealth and Cambridge, using a ratio of 80.06 percent to Commonwealth and 19.94 percent to Cambridge (Exh. RHM-1, at 9). This proposal is consistent with the allocation of divestiture proceeds approved in its Restructuring Plan. However, the Companies propose to allocate the above-book portion of their Canal proceeds entirely to Commonwealth (id.). The Companies' proposal would result in Cambridge's customers receiving $54,628,000 in net proceeds (Exh. RHM-8, Sch.6), and Commonwealth's customers receiving $345,027,000 in net proceeds (Exh. RHM-9, Sch. 6). This proposal is a departure from the Restructuring Plan.[14]

C. Positions of the Parties

1. Attorney General

The Attorney General argues that the Department has the authority to approve the Companies’ allocation proposal and should do so, since the proposal is fair and reasonable (AG Brief at 6-7). He notes that Commonwealth ratepayers have borne 89 percent (not 80 percent) of the relevant Canal costs over time, and that even the Companies’ proposal gives Cambridge ratepayers a better deal for Canal than Montaup’s customers got for their share of Canal (id. at 10-11, citing Exh. DTE/COM-3-1). He contends that the Companies’ allocation proposal advances the sound public policy of reducing rate disparities among regions of Massachusetts (id. at 11). The Attorney General contends that the Restructuring Act establishes a policy in favor of reducing rate disparities within Massachusetts (id. at 8, citing, e.g., G.L. c. 25A, § 11E (requirement that DOER must recommend to the Legislature actions the Department can take to reduce intrastate rate disparities)).

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14 The Companies state that Commonwealth will withdraw its proposal to increase its retail standard offer rate to the level of the wholesale standard offer rates and return to the rate schedule in the Companies' Restructuring Plan (COM/Elec Brief at 40). Instead, the Companies state that Commonwealth's retail standard offer rate would be 3.1 cents per KWH in 1999, as set forth in the Restructuring Plan (id.).

2. MIT

MIT contends that all of the Companies' proceeds from Canal should be allocated between Commonwealth and Cambridge on an 80.06/19.94 percent basis for the following reasons. First, MIT claims that to do otherwise would violate the Restructuring Plan approved by the Department in D.P.U./D.T.E. 97-111 (MIT Brief at 1). In the Restructuring Plan, COM/Elec agreed to allocate all proceeds from divestiture based on an 80.06/19.94 percent basis. D.P.U./D.T.E. 97-111, at 90. MIT contends that there are no changed circumstances warranting departure from the Restructuring Plan (MIT Brief at 4).

Second, MIT argues that there is no basis to shift costs between Cambridge and Commonwealth because they are separate legal entities, with different customers and distinct cost structures (MIT Reply Brief at 3).

Third, MIT argues that Department precedent, which ensures that the gains from the sale of assets follow the risks associated with those assets, mandates that Cambridge ratepayers receive their share of the "excess" proceeds from Canal, because they have borne 19.94 percent of the risks associated with these units (MIT Brief at 6-10, citing e.g., Commonwealth Electric Company, D.P.U. 88-135/151, at 91 (1989); MIT Reply Brief at 3-7, 11 and 12).

Fourth, MIT argues that the Companies' proposal violates the Restructuring Act because the Companies have failed to minimize the transition charge to Cambridge's customers (MIT Brief at 12-13). MIT further notes that, in an earlier proceeding, COM/Elec argued that the Restructuring Act applied to Canal in order to impose stranded costs on Cambridge's ratepayers and therefore should not be allowed to argue now that the Restructuring Act does not apply to Canal (id. at 11-13).

Fifth, MIT claims that the proposed allocation would be in contravention of the FERC Order approving the Offer of Settlement in Docket No. ER90-73-000 *et al*. (1991) ("FERC Settlement"), the proceeding in which the approximately 80/20 ratio was established (id. at 14-15). MIT argues that ignoring the FERC Settlement results in skewed costs, increasing Cambridge's costs by $85 million in order to reduce Commonwealth's costs (id. at 14-15). In addition, MIT states that the Companies' proposed allocation violates FERC principles of cost causation, i.e., "that the party who has caused a cost to be incurred should pay it" (id. at 16, citing Order No. 888, 61 Fed. Reg. 21540, 21635 (1996)).

Finally, MIT argues that COM/Elec's policy rationales for the reallocation proposal fail for the following reasons. The Companies' proposal is not "fair" or "equitable" because it deviates from cost-based allocations (MIT Brief at 17-18). The Restructuring Act does not require equity between the rates of different distribution companies, as is claimed by the Companies (id. at 18). MIT claims that COM/Elec's contention that the proposed reallocation is necessary for Commonwealth to achieve the 15 percent rate reduction mandated by the Restructuring Act is without factual basis (id. at 19-21).[15] MIT claims that without any

[15] The Restructuring Act states that each distribution company must give all its customers receiving Standard Offer Generation Service a rate reduction of at least 15 percent on or before September 1, 1999, applied against the rate adjusted for inflation from August 1997 or such other date as the Department may determine to be representative of 1997 rates for such company. G.L. c. 164, § 1B(b).

reallocation of funds, Commonwealth would achieve a 15 percent rate reduction in 2000 (id., citing Exhs. ES-1; ES-4).

3. Compact

The Compact recognizes that the Companies' proposed allocation differs from that approved in the Restructuring Plan, but contends that the Companies have latitude in allocating the excess proceeds (Compact Brief at 7). The Compact argues that the fact that the Companies' assets yielded almost six times book value is a changed circumstance that calls for deviation from the Restructuring Plan (Compact Reply Brief at 1).

Like the Companies, the Compact argues that the Department is not bound by the FERC Settlement because it has no precedential value (Compact Brief at 7-8). Also, the Compact notes that none of Commonwealth's ratepayers were represented at the FERC proceeding; however, Cambridge's customers were represented by the town of Belmont (id. at 9). According to the Compact, this situation resulted in Commonwealth's ratepayers paying approximately 80 percent of the Canal and Seabrook generating costs and Cambridge's ratepayers paying 20 percent, as opposed to the Companies' initial proposal of approximately 70 percent to Commonwealth and 30 percent to Cambridge (id. at 9, citing Tr. at 44). Therefore, the Compact contends that Cambridge's customers have reaped significant gains from that reallocation at the expense of Commonwealth's customers (Compact Brief at 9).

The Compact states that one of the goals of the Restructuring Act is that affordable electric service should be available to all consumers on reasonable terms and conditions (Compact Brief at 12, citing St. 1997, c. 164, §1(b)). According to the Compact, the

Companies' proposal makes electric service more affordable to Commonwealth's customers, while still leaving the price for electric service for Cambridge's customers among the lowest in the state (Compact Brief at 12). Therefore, the Compact asserts that the Companies' proposal meets the intent of the Restructuring Act (id.).

The Compact notes that Commonwealth's customers pay and will continue to pay much higher rates than Cambridge's customers and argues that the allocation approved in the Restructuring Plan seriously impairs Commonwealth's prospects for achieving a 15 percent rate cut (id. at 16-17). The Compact also notes that the Companies' threat to withdraw its offer to increase the retail standard offer generation price from its present rate of 2.8 cents per KWH to the backstop rate of 3.5 cents per KWH, if its allocation proposal is not accepted, would harm the prospects for retail competition in Commonwealth's service territory (id. at 17).

The Compact states that the Department has consistently ruled that the standard offer generation price does not need to be cost based (id. at 13, citing D.P.U./D.T.E. 97-111, at 20-23). The Compact then contends that since the transition charges have been applied on a flat, per-kilowatthour ("KWH") basis, they are not entirely cost based (Compact Brief at 14, citing Tr. 325-326). Last, the Compact contends that since the standard offer generation price is not cost-based and the transition charge is not purely cost-based, there is no reason that the asset sale proceeds must be allocated purely on a cost basis (Compact Brief at 14; Compact Reply Brief at 2-3).

Like the Companies, the Compact argues that the Companies' proposal will result in immediate rate reductions, advancing the competitive market (by increasing the retail standard offer generation price to the backstop price), minimizing rates in the long run by avoiding large deferrals, and reducing the disparity of rates between Cambridge and Commonwealth (Compact Brief at 14). Therefore, the Compact contends that the Companies' proposed allocation should be approved.

4. The Companies

The Companies explain that they revised the allocation method approved as part of the Restructuring Plan in light of "changed circumstances" (Tr. at 178). The Companies point to two unexpected factors in particular: (1) the receipt of almost six times book value for the Canal units, and (2) a likely increase in deferrals as a result of increases in PPA costs (COM/Elec Brief at 39, citing Exh. DTE/COM-2-5). The Companies characterize the additional above-book proceeds received from the sale of Canal as "found money" or a "found opportunity" (Tr. at 180-182). The Companies state that their proposed allocation will produce more equitable and reasonable rate reductions for all Cambridge and Commonwealth customers and will enable Commonwealth as well as Cambridge to achieve the 15 percent rate reduction required by the Restructuring Act (COM/Elec Brief at 34). Therefore, according to the Companies, the proposed allocation of the proceeds is consistent with the Restructuring Act and the Companies' Restructuring Plan (id. at 33).

The Companies maintain that they are balancing the objectives of immediate rate reductions, advancing the competitive market (by increasing the retail standard offer generation price to the backstop price), minimizing rates in the long run by avoiding large deferrals, and reducing the disparity of rates between Cambridge and Commonwealth (COM/Elec Brief at 34-35).[16] The Companies state that the Restructuring Act is silent on the issue of allocation of divestiture proceeds and instead left the approval of any allocation proposal to the Department (id. at 37-38, citing G.L. c. 164, § 1G(d)(1); COM/Elec Reply Brief at 5). The Companies also claim that the Restructuring Act does not apply to Canal, because it is a wholesale generation company (COM/Elec Brief at 38 n.31).[17]

Regarding FERC jurisdiction over the allocation, the Companies state that FERC has deferred to the states on issues relating to retail transition costs where the states have asserted jurisdiction (COM/Elec Reply Brief at 6, citing Order 888, 60 Fed. Reg. 17662 (1995)). In addition, the Companies state that when a unit is sold, FERC does not require the owner to turn over the sale proceeds to its power purchasers (COM/Elec Reply Brief at 6, citing Duke Power Company, 48 FPC 1384 (1972)). Also, the Companies claim that the FERC Settlement is not binding in this case because the FERC Settlement was not based on a cost-causation analysis (COM/Elec Brief at 36).

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16 The Department notes that there is a statutorily-prescribed mechanism for mitigating rate disparities between companies. G.L. c. 10, § 62; G.L. c. 25A, § 11E.

17 The Companies claim that the question of which company receives what portion of the proceeds from the sale of the Canal 1 and Canal 2 units is a ratemaking question reserved for the Department. The Companies further argue that since Canal 1 and Canal 2 are owned by a wholesale generation company, and since wholesale generation companies do not have any obligation to mitigate and return the full value of a divested asset, "substantial flexibility exists in the present circumstances to allocate the additional proceeds in the manner proposed by the Companies" (COM/Elec Brief at 38 n.31).

Further, the Companies assert that, judging by the responses to their PPA auction, PPA costs may increase by ten to twenty percent over the amount projected in their Restructuring Plan, requiring substantial deferrals (id. at 40). Also, according to the Companies, if inflation continues to be lower than projected in their Restructuring Plan, then they would need to defer even more revenue to meet the inflation-adjusted rate cap (id.). Consequently, the Companies claim that if something approximating their proposed allocation is not allowed, they will not be able to meet the 15 percent rate reduction requirement, and consequently, will withdraw their offer to increase Commonwealth's standard offer generation price from its present rate of 2.8 cents per KWH to the backstop rate of 3.5 cents per KWH (id.).

D. Analysis and Findings

Several options were explored during this proceeding for allocating COM/Elec's proceeds from the sale of Canal to Cambridge and Commonwealth.

The first option is to allocate all the proceeds as approved in the Companies' Restructuring Plan -- that is, 80.06 percent to Commonwealth and 19.94 percent to Cambridge. This option is supported by MIT.

The second option is to allocate the proceeds as proposed by the Companies -- that is, using a ratio of 80.06 percent to Commonwealth and 19.94 percent to Cambridge up to Canal's book value and then allocate the remaining proceeds entirely to Commonwealth. This option also is supported by the Attorney General and the Compact.

Other options arose during hearings (Tr. at 176-179, 456-460, 487-491). One option first separates COM/Elec's proceeds from the sale of Canal between those received for Canal 1 and those received for Canal 2. It then allocates 25 percent of the proceeds from Canal 1 and all of the proceeds from Canal 2, using a ratio of 80.06 percent to Commonwealth and 19.94 percent to Cambridge as approved in the Companies' Restructuring Plan. The remaining 75 percent of Canal 1 proceeds would go entirely to Commonwealth. Under yet another option, the division of the proceeds would be based on a split of 89/11, which represents the historical allocation of costs between the two companies, instead of the Companies' proposed split of 80/20 (Exh. DTE-3-1).

The Department finds that there is not sufficient information in the record to decide how the proceeds from the sale of Canal should be allocated between Cambridge and Commonwealth.[18] Therefore, before issuing a decision on the allocation proposal, the Department will hold further hearings to obtain additional information. The Department is cognizant of the fact that the Companies and some of the other parties would like a decision on the allocation issue as soon as possible because they would like to increase the standard offer generation rate effective January 1, 1999. Consequently, the Department will make all reasonable efforts to expedite this proceeding. To this end, the Department proposes that a procedural conference be held on Wednesday, November 4, 1998 at 10:00 A.M. at the Department's offices. Any party who wishes to propose an alternative date for the procedural conference must do so, with the hearing officer, no later than close of business Monday,

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18 The Department acknowledges that the parties, in response to a briefing question, either expressed indifference to reopening this question or contended that the record was complete on the allocation issue.

November 2, 1998. The purpose of the procedural conference will be to establish additional hearing dates as soon as is reasonable.

V. ENERGY INVESTMENT SERVICES

A. Introduction

The Companies propose to allow Cambridge and Commonwealth to retain the net proceeds from the units that each of the two companies own independently (Exh. RHM-1, at 13). However, with regard to the proceeds from the Canal units, the Companies propose to establish a special purpose affiliate, Energy Investment Services, Inc. ("EIS"), that will hold and manage the Canal proceeds net of the Canal-related fixed component of the transition charge and net of income taxes (Exh. RDW-1, at 10). The Companies state that the funds will be administered by EIS "with the goal of preserving principal and maximizing earnings for the benefit of retail customers" (id. at 11). EIS will credit the proceeds and any return earned on them to the account of Commonwealth only[19] (Exh. RHM-1, at 14). According to the Companies, EIS will pay to Commonwealth the fund value as required, and Commonwealth will credit the fund value with any tax benefits to its transition charge account (id.). This arrangement will result in a reduction in the transition costs (id.).

The Companies explained that, for the proceeds that are not transferred to EIS, the return will be the same as given in the Restructuring Plan (id. at 16). However, for the

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[19] Only the above-book value proceeds from the Canal units will be transferred to EIS. As described in the Companies' allocation proposal in Section III, above, the Companies are proposing to allocate the entire above-book value portion of the proceeds to Commonwealth.

proceeds that are managed by EIS, a return will be set equal to whatever return EIS is able to earn on the proceeds (id.). For illustrative purposes, in the schedules showing the calculation of the transition charge, the Companies have used a rate of return of seven percent, which they state is "an estimate of the future rate of EIS' investment portfolio over the amortization period" (id.).

B. Positions of the Parties

1. The Attorney General

The Attorney General argues that the Department should reject the Companies' proposal because it violates an "adjudicated element" of the Companies' Restructuring Plan as well as an "express term" of the Restructuring Act (AG Brief at 13). The Attorney General states that the Restructuring Plan requires that the carrying charge on any remaining balance of the proceeds be paid to customers at the same rate of return used to calculate the carrying costs on the unamortized balance of the transition costs (id. at 13-14). The Attorney General asserts that there has been no relevant change in circumstances to warrant the Companies' proposed amendment to its Restructuring Plan change, because the Companies should have expected proceeds that were substantially above book value and should have been aware of the rates of return available in money markets (id. at 14).

The Attorney General states that § 193 1A(b)(3) of the Restructuring Act requires that the Companies apply any proceeds from divestiture to reduce the transition costs (id. at 15). The Attorney General argues that in order to comply with this requirement of the Restructuring Act, any proposal for the return of proceeds must produce the same result as would be accomplished by a direct reduction in the balance of the transition costs claimed by the Companies (AG Brief at 15). The Attorney General states that the Companies' earlier proposal, approved in the Restructuring Plan, achieved this goal by providing the same rate for the return of the proceeds as it did for the return on the unrecovered transition costs (id.). He asserts that, in this way, ratepayers were indifferent to the option of (1) having the proceeds returned to them through the RVC, and (2) the option of having the proceeds credited directly against the transition costs claimed by the Companies (id.). The Attorney General contends that the Companies' current proposal does not accomplish this goal and is, therefore, inconsistent with the Restructuring Act (id.).

The Attorney General estimates that, assuming a rate of return of seven percent on the funds managed by EIS, ratepayers would lose approximately seven million dollars per year, resulting in a total loss of approximately $70 million and an increase in the transition charge of 0.20 cents per KWH (id. at 13, 15). The Attorney General contends that the Companies' estimated rate of return of seven percent for funds managed by EIS is inflated (id. at 16). He argues that the Department should reject the Companies' proposal because it deprives consumers of the rate relief intended by the Legislature (id. at 13).

Further, the Attorney General argues that the Companies' proposal is unfair because it would allow the Companies to collect carrying costs on their Seabrook-related transition costs at a rate that is almost twice that being paid to ratepayers on the gain on the sale of the generating units (id. at 15-16). The Attorney General contends that the proposal "deprives their customers of equal treatment and violates the Department's longstanding practice of applying a uniform rate to rate base and credits alike" (id. at 16). The Attorney General asserts that requiring the same rate of return for recovery of transition costs and for return of divestiture proceeds was based on the well established need for ratemaking equity and symmetry (AG Reply Brief at 4).

The Attorney General recommends that the Department reject the Companies' claim that their capital needs are insufficient to support the use of the funds to be transferred to EIS (id.). The Attorney General states that there are a number of options available to the Companies that could be used instead of transferring the funds to EIS (AG Brief at 14 n.11). He states that the proceeds could be "netted against the $200 million investment in Seabrook Nuclear Power Station" or the proceeds could be used to buy back stocks and bonds (id.).

2. Compact

The Compact states that the Companies' proposal is "clearly worse from the ratepayers' perspective" than what was approved in the Restructuring Plan (Compact Brief at 21). Further, the Compact agrees with the Attorney General that there is not a sufficient basis in the record to approve the change from the Companies' Restructuring Plan (Compact Reply Brief at 3). The Compact finds it "particularly troubling" that ratepayers will pay high carrying costs on Seabrook-related transition costs while receiving low returns on the above-book proceeds from Canal (id. at 3-4). The Compact contends that the Companies' proposal should be approved only if there is a compelling reason to do so, and it states that it finds no such compelling reason in the record (id. at 4).

3. The Companies

The Companies state that, in the absence of investment opportunities through Canal, management of the above-book proceeds by EIS will ensure that the proceeds are invested conservatively over time in order to protect the principal while maximizing the value of the proceeds for customers and providing a consistent rate reduction over the amortization period of the RVC (COM/Elec Brief at 45). In addition, the Companies believe that segregation of the proceeds in EIS will provide significant tax benefits (id. at 44). The Companies state that these tax benefits will result in net state and federal tax savings of $2.5 million and $6.7 million respectively (id.). Furthermore, if the Companies determine that they are able to treat the asset sale as a non-taxable event, additional amounts will be available for ratepayers over the amortization period (id. at 45).

The Companies state that their capital needs are small compared to the magnitude of the proceeds. Further, the Companies state that "if we were to put $200 million into Commonwealth and calculate the return on that investment based on the approved rate of return, and then refund those dollars to customers, we'd bankrupt the company, because there would be no ability to pay the rate of return that's equivalent to the debt costs, because we'd be adding those returns. There would be no return to the stockholders on those investments" (Tr. at 205). The Companies state that there are two ways in which a utility can earn a rate equal to that in the Restructuring Plan: first, the Companies can invest the proceeds in large projects needed for utility operations; or second, they can invest the proceeds in the market in an instrument that will earn the required rate of return (COM/Elec Brief at 46). Since Canal will no longer have a fossil generation business in which to invest the above-book proceeds, and because the Companies themselves do not have capital needs equivalent to the above-book proceeds, the Companies state that they cannot pursue the first option, and must instead look to the market to invest the funds (id. at 46). The Companies caution however, that investing in the market in order to earn double-digit returns carries the risk of lost principal, which must be weighed carefully (id.).

The Companies assert that the formation of EIS for managing the above-book proceeds is consistent with the Restructuring Act (id. at 15-16). According to the Companies, by agreeing to return the entirety of the net proceeds from the divestiture, they have met the requirements of the Restructuring Act (id. at 16). The Companies assert that beyond requiring the return of the entirety of the net proceeds, the Restructuring Act says nothing about how the proceeds are to be returned or what carrying charge is to be applied in calculating the RVC (id.). Further, the Companies contend that returning the entire proceeds in the first year and thus avoiding carrying charges is not practical because it would create rate shock for customers in the following year (id. at 47, citing Exh. AG-1-29). The Companies explain that returning all proceeds in the first year would result in a transition charge of negative 5.5 cents per KWH in that year and a transition charge of 4.4 cents per KWH in the following year, resulting in an increase in rates by about 10 cents per KWH between the first and second year (Exh. AG-1-29).

The Companies contend that the Attorney General's proposal for the Companies to pay down Canal's unrecovered balance of about $200 million in Seabrook is not a viable alternative (COM/Elec Brief at 19). First, the Companies state that equity holders expect to be paid a return of, and on, their investment in Seabrook (id.). The Companies argue that, if they were to eliminate the unrecovered balance of Seabrook, they would not be able to pay the equity holders the earnings that they expect and to which they are entitled (id.). Second, the Companies assert that Canal cannot repay its equity holders by buying back shares at the book value because the market price of shares are traded at a premium over book value (id. at 19-20). Thus, according to the Companies, "[a]ny such recapture of equity, even if possible, would be at a substantial premium over book value" (id. at 20).

Furthermore, the Companies contend that the Attorney General is attempting to relitigate Seabrook issues that were reviewed and litigated in FERC proceedings in which the Attorney General was "an active participant" (id. at 20-21). The Companies state that Seabrook-related costs on the Companies' books are based on FERC-approved tariffs (id. at 21). The Companies assert that denial of these FERC-approved tariffs "would violate the filed rate doctrine and would be preempted by the United States Constitution," and would constitute an unlawful taking of shareholder property (id.).

C. Analysis and Findings

The Department recognizes that not requiring the Companies to pay the return according to the Restructuring Plan might represent a considerable loss to Commonwealth ratepayers. However, the Department is concerned that requiring the Companies to pay a rate of return on the above-book proceeds equal to that in the Restructuring Plan may cause the Companies financial harm. The Department will hold further hearings to investigate options for handling the above-book proceeds to maximize the savings to ratepayers without significant adverse effect on the financial health of the Companies.[20]

VI. RATE AND TARIFF CHANGES

A. Introduction

The Companies have proposed the following changes to their rates and tariffs: (1) revise the transition charge for Commonwealth and Cambridge based on the application of the RVC; (2) increase the standard offer generation rate from 2.8 cents per KWH to 3.5 cents per KWH; (3) increase the interim default service rate from 3.2 cents per KWH to 3.5 cents per KWH; and (4) adjust the demand-side management ("DSM") charge and renewable energy charge according to the Restructuring Act. In addition, the Companies proposed language changes to the transition charge calculation (Exhs. RHM-8; RHM-9). Each of these proposed changes and rate adjustments will be discussed below.

B. Transition Charge Adjustment

The Companies have proposed adjustments to the transition charge for Commonwealth and Cambridge based on the application of the RVC (Exh. RHM-1, at 6). Due to the fact that the ultimate reduction in the transition charge is contingent upon the allocation of the proceeds of the divestiture, the Department will defer ruling on the Companies' application of the RVC until the close of the additional hearings, discussed in Sections IV and V, above.

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[20] COM/Elec and the Attorney General both indicated that a delay in ruling on the Companies' EIS proposal would not interfere with the Asset Divestiture (COM/Elec and AG Responses to Supplemental Briefing Question, dated October 16, 1998).

C. Standard Offer Increase

The Companies proposed to increase the standard offer generation rate from 2.8 cents per KWH to 3.5 cents per KWH effective January 1, 1999 for both Commonwealth and Cambridge (Exh. MRK-1, at 30). However, the Companies also stated that if their allocation proposal is denied, they will withdraw their proposed increase of the standard offer generation rate for Commonwealth (COM/Elec Brief at 40). Therefore, the standard offer generation rate would increase from 2.8 to 3.1 cents per KWH, effective January 1, 1999, pursuant to the Restructuring Plan. D.P.U./D.T.E. 97-111 (Exh. CEC-1, Tab D at 30). Due to the fact that any adjustment to the standard offer generation rate is contingent upon the allocation of the proceeds of the divestiture, the Department will defer ruling on the Companies' proposal until the close of the additional hearings.

D. Interim Default Service Increase

The Companies proposed to increase the interim default service rate from 3.2 cents per KWH to 3.5 cents per KWH effective January 1, 1999 (Exh. HCL-1, at 5). No parties took issue with the proposed increase to the interim default service rate. Because this increase is consistent with the Restructuring Plan (D.P.U./D.T.E. 97-111, Tab D at 13), the Department approves the increase.

E. Adjustments to the Demand-Side Management and Renewable Energy Charges

1. Introduction

Pursuant to G.L. c. 25, §§ 19, 20, the Companies also have included adjustments to the DSM and renewable energy charges (id. at 6). These adjustments are to become effective

January 1, 1999 (id.). The adjustments are as follows: (1) the DSM charge will decrease from $0.0033 per KWH to $0.0031 per KWH; and (2) the renewable energy charge will increase from $0.00075 per KWH to $0.0010 per KWH.

2. Analysis and Findings

No parties took issue with the proposed adjustments to the DSM and renewable energy charges. Because these adjustments are mandated by the Restructuring Act, the Department approves the adjustments.

F. Proposed Language Changes to the Transition Charge Calculation

1. Introduction

Exhibits RHM-8 and RHM-9 contain revisions to the transition charge calculation that was included in the Companies' original restructuring proposal. In addition to the numeric changes that stem from the application of the RVC, the Companies have included language changes to these sections. Also contained within these sections are issues that were deferred in D.P.U./D.T.E. 97-111 (i.e., the inclusion of various regulatory assets in the transition charge and whether or not Seabrook should be treated as a PPA or an owned asset).

2. Positions of the Parties

With regard to the language changes proposed by the Companies, the Attorney General argues that the Department should not approve any changes that are not consistent with the scope of this proceeding (AG Brief at 17). On the issue of the specific details of the calculation and components of the Companies' transition charges, the Attorney General states that the Department should continue to defer these issues, just as they were deferred in D.P.U./D.T.E. 97-111 (AG Reply Brief at 2).

The Companies are seeking the approval of their entire divestiture plan, including those language changes proposed in Exhibits RHM-8 and RHM-9 (COM/Elec Reply Brief at 24). However, the Companies state that they do not believe that resolution of the issues that were deferred in D.P.U./D.T.E. 97-111 is required in this proceeding (Tr. at 364).

3. Analysis and Findings

In D.P.U./D.T.E. 97-111, at 61, the Department found that we did not have the time needed to conduct a full audit and investigation of the issues raised by the Attorney General. The Department also found that the transition costs at issue were all subject to audit and reconciliation. Id. at 61-62. As a result, the Department deferred a ruling on these issues until the first case reconciling actual transition costs to estimated transition costs. Id.

In the instant proceeding, the Department finds that the circumstances have not changed regarding the time available to the Department to consider fully the issues raised by the Attorney General in D.P.U./D.T.E. 97-111. In addition, these issues remain subject to audit and reconciliation. Therefore, the issues that were deferred in D.T.E. 97-111 will continue to be deferred until the Companies' first proceeding designed to reconcile actual transition costs to estimated transition costs.

The Department notes that there was insufficient time in this proceeding to review and evaluate the language changes to the transition charge calculation proposed by the Companies. In addition, the Department finds that the language changes proposed by the Companies are not a necessary factor in the completion of the asset divestiture proposed by the Companies. Therefore, the Department defers ruling on the language changes to the transition charge calculation as proposed by the Companies in this proceeding in Exhs. RHM-8 and RHM-9. The Department notes that the resolution of these proposed language changes would be more appropriately addressed in the Companies' first transition charge reconciliation proceeding.

VII. ORDER

Accordingly, after due notice, hearing and consideration, it is hereby

ORDERED: That the Asset Divestiture involving the sale by Cambridge Electric Light Company, Commonwealth Electric Company, and Canal Electric Company of its non-nuclear generation units to Southern New England, L.L.C., as embodied in the Purchase and Sale Agreements and other related documents, as amended, is approved; and it is

FURTHER ORDERED: That the Asset Divestiture involving the sale by Eastern Edison Company and Montaup Electric Company for Approval of a Sale by Montaup of its interest in the Canal 2 generating facility to Southern New England, L.L.C., as embodied in the Purchase and Sale Agreements and other related documents, as amended, is approved; and it is

FURTHER ORDERED: That Canal 2, Kendall Station, the Martha's Vineyard Diesels, and Commonwealth’s share of Wyman Unit 4 are eligible facilities as defined in PUHCA.

FURTHER ORDERED: That additional evidentiary hearings concerning the allocation proposal and Energy Investment Services will be scheduled for Cambridge Electric Light Company, Commonwealth Electric Company and Canal Electric Company; and it is

FURTHER ORDERED: That Cambridge Electric Light Company, Commonwealth Electric Company, and Eastern Edison Company comply with all orders and directives contained herein.

By Order of the Department,

____
Janet Gail Besser, Chair

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

____
Paul B. Vasington, Commissioner

____
Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).